

The Commonwealth of Massachusetts

JOURNAL OF THE HOUSE.



TUESDAY, APRIL 7, 2009.

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Tuesday, April 7, 2009.

Met according to adjournment, at eleven o'clock A.M., with Mr. Petrolati of Ludlow in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

God, Our Creator, at the opening of today's legislative session, we pause for a moment of personal prayer and reflection as we turn our attention and thoughts to You and spiritual realities. This week's Jewish and Christian religious observances and prayer services remind us of Your presence in our midst. At Passover and Easter, we profess our gratitude to You for our daily material and spiritual blessings and for Your presence in our lives. We believe that You give meaning, direction and a sense of purpose to our daily living. We are also grateful that our personal freedom, dignity, our right conscience and religious beliefs and values are recognized and respected in our Commonwealth and country. As elected leaders, we look to You for guidance as we enact legislation which serves the present and future common good and the objective best interests of the people and our communities.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

Prayer.

At the request of the Chair (Mr. Petrolati), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Pledge of
allegiance.

Silent Prayer.

During the session, at the request of Speaker DeLeo of Winthrop and the Chair (Mr. Petrolati of Ludlow), the members, guests and employees stood in a moment of silent tribute to Dorothy Kocot, the mother of Representative Peter V. Kocot, who passed away this past Sunday after fighting a courageous battle with brain cancer. Mrs. Kocot worked for over 35 years as a medical technician for the Cooley Dickinson Hospital in Northampton. In addition, she was known for her philanthropy and support for numerous local charities as well as being an avid local sports fan. Mrs. Kocot is survived by her five children and eight grandchildren.

Dorothy Kocot.

Statement Concerning Representative Ayers of Quincy.

A statement of Mrs. Haddad of Somerset concerning Mr. Ayers of Quincy was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Mr. Ayers of Quincy, is unable to be present in the House Chamber for today's sitting due to unavoidable family business outside the Commonwealth. Any roll calls that he may miss today will be due entirely to the reason stated.

Statement
concerning
Representative
Ayers of Quincy.

UNCORRECTED PROOF

Statement of Representative Canessa of New Bedford.

A statement of Mr. Canessa of New Bedford was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that I will be unable to be present in the House Chamber for the remainder of today's sitting due to an unexpected family medical emergency. Any roll calls that I may miss will be due entirely to the reason stated.

Statement of
Representative
Canessa of New
Bedford.

Statement Concerning Representative Coakley-Rivera.

A statement of Mrs. Haddad of Somerset concerning Ms. Coakley-Rivera of Springfield was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Ms. Coakley-Rivera of Springfield, is unable to be present in the House Chamber for today's sitting due to illness. Any roll calls that she may miss today will be due entirely to the reason stated.

Statement
concerning
Representative
Coakley-Rivera of
Springfield.

Statement Concerning Representative Flynn of Bridgewater.

: A statement of Mrs. Haddad of Somerset concerning Mr. Flynn of Bridgewater was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Mr. Flynn of Bridgewater, is unable to be present in the House Chamber for today's sitting due to his hospitalization for a knee injury. Any roll calls that he may miss today will be due entirely to the reason stated.

Statement
concerning
Representative
Flynn of
Bridgewater.

Statement Concerning Representative Kocot of Northampton.

A statement of Mrs. Haddad of Somerset concerning Mr. Kocot of Northampton was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Mr. Kocot of Northampton, is unable to be present in the House Chamber for today's sitting due to the death of his mother, Dorothy. Any roll calls that he may miss today will be due entirely to the reason stated.

Statement
concerning
Representative
Kocot of
Northampton.

Appointment of the Minority Leader.

The Minority Leader announced that he had appointed Representative Gifford of Wareham to serve on the special commission established (under Chapter 9 of the Resolves of 2008) to make an investigation and study relative to designating 1,000 great places in the Commonwealth.

Great places
commission.

Resolutions.

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

Resolutions (filed by Ms. Peisch of Wellesley) honoring Donald Puffer on his one hundredth birthday;

Donald Puffer.

Resolutions (filed by Mr. Smizik of Brookline) memorializing Congress to commit to the goal re-powering America with 100 per cent clean electricity in the next 10 years;

Clean electricity.

Resolutions (filed by Mr. Turner of Dennis) congratulating Christopher Gaetano Forte Doyle upon receiving the Eagle Award of the Boy Scouts of America;

Christopher Forte Doyle.

Mr. Binienda of Worcester, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the Rules, in each instance, on motion of Mr. Spellane of Worcester, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Petition.

Mr. Nyman of Hanover presented a petition (accompanied by bill, House, No. 4050) of Robert J. Nyman and Michael W. Morrissey (by vote of the town) that the town of Rockland be authorized to set a supplementary tax assessment in said town; and the same was referred to the committee on Revenue. Sent to the Senate for concurrence.

Rockland,—
Supplementary
tax assessment.

Reports of Committees.

By Mr. Donato of Medford, for the committee on Municipalities and Regional Government, on a petition, a Bill relative to the charter in the town of Auburn (House, No. 4049) [Local Approval Received]. Read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Auburn,—
charter.

Mr. Kafka of Stoughton, for said committee, then reported recommending that the matter be scheduled for consideration by the House.

Under suspension of the rules, on motion of Mr. Spellane of Worcester, the bill was read a second time forthwith; and it was ordered to a third reading.

Subsequently, the noon recess having terminated, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn), was read a third time, under suspension of the rules, on motion of Mr. Jones of North Reading; and it was passed to be engrossed. Sent to the Senate for concurrence.

By Mr. Honan of Boston, for the committee on Housing, on a petition, a Bill relative to the homeownership opportunity program (House, No. 4042).

Homeownership
program.

By Mr. Donato of Medford, for the committee on Municipalities and Regional Government, on a petition, a Bill authorizing the conveyance of certain parcels of land in the city of Revere (House, No. 3470) [Local Approval Received].

Revere,— land.

Severally read; and referred under Rule 33, to the committee on Ways and Means.

By Mr. Donato of Medford, for the committee on Municipalities and Regional

Arlington,

UNCORRECTED PROOF

Government, on a petition, a Bill establishing the Arlington Redevelopment Government Board as the Board of Survey (House, No. 3471) [Local Approval Received].

—Redevelopment Board.

By the same member, for the same committee, on a petition, a Bill relative to employees of the town of Westborough (House, No. 3796).

Westborough,—employees.

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Recess.

At thirteen minutes after eleven o'clock A.M., on motion of Mr. Spellane of Worcester (Mr. Petrolati of Ludlow being in the Chair), the House recessed until the hour of one o'clock P.M.; and at thirteen minutes after one o'clock P.M. the House was called to order with Mr. Petrolati in the Chair.

Recess.

Engrossed Bill.

The engrossed Bill authorizing the city of Beverley to grant 2 additional licenses for the sale of alcoholic beverages to be drunk on the premises (see House, No. 3795) (which originated in the House), having been certified by the Clerk to rightly and truly prepared for final passage, was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Bill enacted.

Quorum.

Mr. Smizik of Brookline thereupon asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati of Ludlow), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 151 members were recorded as being in attendance.

Quorum,—yea and nay No. 49.

[See Yea and Nay No. 49 in Supplement.]

Therefore a quorum was present.

Orders of the Day.

The Senate Bill modernizing the transportation systems of the Commonwealth (Senate, No. 2024, amended), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time.

Transportation reform bill.

After debate on the question on passing the bill, as amended, to be engrossed, in concurrence, Ms. Callahan of Sutton moved to amend it in line 791, after the word “action.” by inserting the following paragraph:

“(e) The office for taxpayer advocacy shall be responsible to report publicly and transparently detailed and comprehensive information about all transportation contracts, including infrastructure ones, involving the Massachusetts Transportation and Infrastructure Authority. Reports shall be made available through an online system website. Such website shall have up to date information on the status of pending as well as awarded state contracts. A certain dollar amount for state contract awards and specific agency expenditures that will be posted may be set by the office.”.

After remarks the amended was adopted.

The same member then moved to amend the bill by adding the following section:

“SECTION 172. Not more than one year following the passage of this act, and not less than once every five years thereafter, the Executive Office of Transportation and the Massachusetts Transportation and Infrastructure Authority shall facilitate an independent audit of all transportation systems within their jurisdiction.

Said audit shall be achieved through either a contract with an independent entity with demonstrable expertise, experience and capability to perform an audit of the scope and magnitude required, or through an interagency service agreement or similar mechanism entered into with the Auditor of the Commonwealth.

The purposes of said audit shall include, but not be limited to, the identification of unrealized potential cost savings and efficiencies, the evaluation of the efficiency of transportation systems, and the development of recommendations to capture savings and improve efficiencies.

The results of said audit shall be report to the clerks of the House and Senate in a timely manner after its completion.”.

After remarks the amendment was rejected.

Ms. Callahan then moved to amend the bill in line 737, after the figure “4.”, by inserting the following sentence: “The secretary shall be empowered to have all office directors under the Massachusetts Transportation and Infrastructure Authority to sign performance contracts that include achievement of specific strategic tasks and performance goals.”. After remarks the amendment was rejected.

Ms. Callahan of Sutton then moved to amend the bill by adding the following section:

“SECTION 172. Section 182, Chapter 149 of the General Laws as so appearing, is hereby amended by inserting the following paragraph at the end thereof:-

A special commission, to consist of 3 members of the senate, 3 members of the house of representatives, the secretary of state or his designee, the state auditor or his designee, the inspector general or his designee, the secretary of the executive off for administration and finance or her designee and the attorney general or her designee, is hereby established for the purpose of making an investigation and study of quasi-public agencies in the commonwealth, including but not limited to, the Massachusetts Turnpike Authority, Massachusetts Bay Transit Authority, Massachusetts Port Authority and the Massachusetts Transportation and Infrastructure Authority. Said commission shall examine the administrative, managerial and fiscal systems and the accountability of such agencies. Said commission shall consider issues of quasi-public agency governance, financial management practices, accounting, controls, and whether policies and procedures are in place to assure the integrity of quasi-public agency operations, expectations in law and general accepted accounting and management standards applicable to quasi-public agencies in the commonwealth. Said commission shall consider issues of accountability of quasi-public agencies to the commonwealth, including the executive and legislative branches and to the public. Said commission shall report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry such recommendations into effect by filing the same with the clerk of the senate on or before July 31, 2009.”.

After remarks the amendment was adopted.

The same member then moved to amend the bill in line 2960 by inserting after the word “Winthrop” the word “, Worcester”.

After remarks on the question on adoption of the amendment Mr. Wagner of Chicopee moved that it be amended by adding at the end thereof the following: “and in line 3035, by striking out the figures ‘500,000’ and inserting in place thereof the figures ‘250,000’”. After remarks (Mrs. Haddad of Somerset being in the Chair) the further amendment was adopted. The amendment offered by Ms. Callahan of Sutton, as amended, then also was adopted.

The same member then moved to amend the bill in line 250 by inserting after the word “thereof” the following: “; provided further, no authority board director shall have been a registered legislative agent, executive agent or lobbyist entity as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment, no authority board director shall have been a member of the General Court or employee of the Executive branch or of the General Court for a period of 2 years prior to his appointment, and no authority board director shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment”, and in line 636 by inserting after the word “department” the following: “; provided further, no director or manager of any office or department created within the authority charged with duties and responsibilities of the authority shall have been a registered legislative agent, executive agent or lobbyist entity as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment, shall have been a member or employee of the general court or an employee of the executive branch for a period of 2 years prior to his appointment, and shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment”.

After remarks the amendments were rejected

Mr. Pignatelli of Lenox then moved to amend the bill in lines 1937 and 1954, by striking out the figures “7,000” and inserting in place thereof, in each instance, the figures “10,000”; and (Mr. Petrolati of Ludlow being in the Chair) the amendments were rejected.

Mr. Pignatelli then moved to amend the bill in line 1974 by inserting after the word “municipalities” the following: “with populations less than 35,000”; and the amendment was rejected.

Representatives Costello of Newburyport and Sandlin of Agawam then moved to amend the bill by striking out section 22 (as printed) and inserting in place thereof the following two sections:

“SECTION 19. Section 29 of Chapter 22C of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking, in lines 1 and 2, the words ‘Massachusetts Turnpike Authority’ : and inserting in place thereof the words ‘Massachusetts Transportation and Infrastructure Authority’.

Said chapter of said section is hereby further amended by inserting, in line 3, after the word ‘authority’ the following words ‘on the Turnpike and the Metropolitan Highway System’.

Said chapter of said section is hereby further amended by striking, in line 28, the word ‘chairman’ and inserting in place thereof the word:- Secretary.

SECTION 19A. Section 61 of Chapter 22C of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking, in lines 1 and 2, the words ‘Massachusetts Turnpike Authority’ and inserting in place thereof the words:-

Massachusetts Transportation and Infrastructure Authority.”.

After remarks the amendment was adopted.

Ms. Polito of Shrewsbury then moved to amend the bill by adding at the end thereof the following section:

“SECTION 173. Notwithstanding the provisions of any general or special law to the contrary, there will be no toll increases imposed without the affirmative votes of both the House and Senate by a call of the yeas and nays.”.

Pending the question on adoption of the amendment, Mr. Humason of Westfield asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati of Ludlow), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 152 members were recorded as being in attendance.

[See Yea and Nay No. 50 in Supplement.]

Therefore a quorum was present.

Subsequently a statement of Mrs. Grant of Beverly was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that I was not recorded on the previous roll call due to being on official business in another part of the State House.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Ms. Polito of Shrewsbury; and on the roll call 20 members voted in the affirmative and 135 in the negative.

[See Yea and Nay No. 51 in Supplement.]

Therefore the amendment was rejected.

Messrs. Frost of Auburn and Peterson of Grafton then moved to amend the bill by inserting after section 162 (as printed) the following section:

“SECTION 161A. Notwithstanding any general or special law to the contrary, the Massachusetts Turnpike Authority, or any successor authority or agency, shall conduct an audit of its records of the electronic toll collection system and repay an account holder who has been overcharged during the period commencing as far back as records are kept whether the holder has requested payment. Pending said audit, the Massachusetts Turnpike Authority, or any successor authority or agency shall extend the time permissible for an account holder to dispute an overcharge of the electronic toll collection system to a period of 3 years from the time of the overcharge unless the Turnpike authority, or any successor authority or agency, chooses to extend the disputing time frame longer than 3 years.”.

After remarks on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of the same member; and on the roll call 154 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 52 in Supplement.]

Therefore the amendment was adopted.

Ms. Polito of Shrewsbury then moved to amend the bill by adding the following section:

“SECTION 173. Notwithstanding the provisions of any general or special law to the contrary, there will be no toll increases imposed on the portion of the Massachusetts Turnpike west of Route 128 without the affirmative votes of both the House and Senate by a call of the yeas and nays.”.

The amendment was rejected.

Quorum.

Quorum,—
yea and nay
No. 50.

Statement of
Representative
Grant of Beverly.

Amendment
rejected,—
yea and nay
No. 51.

Amendment
adopted,—
yea and nay
No. 52.

The Speaker being in the Chair, —

Ms. Story of Amherst asked for a count of the House to ascertain if a quorum was present. The Speaker, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 150 members were recorded as being in attendance.

Quorum.

Quorum,—
yea and nay
No. 53.

[See Yea and Nay No. 53 in Supplement.]

Therefore a quorum was present.

Mr. Bowles of Attleboro and other members then moved to amend the bill in line 703 by inserting after the word “transportation.” the following paragraph:

“In addition to the performance objectives and measurements listed in this section, design and construction projects shall identify key milestones and tasks associated with said project, and report on a monthly basis listing the percent complete for each milestone/task along with the planned percent complete, as well as the actual cost expended for each milestone/task compared to the planned cost shall be generated, and submitted to the next higher level of management. Any deviation of greater than 7% from the planned schedule or planned cost shall be explained in a monthly report to the next level of management with a reason for the difference, as well as the plan to get back on schedule or budget. In the event the cost or schedule deviation results in the scenario where the project cannot recover and the project will be over budget or late, approval to revise the project plan must be obtained from management, and the joint Committee on Ways and Means and Transportation must be notified.”.

After remarks the amendment was adopted.

Mr. Petrolati of Ludlow being in the Chair, —

Mr. Evangelitis of Holden then moved to amend the bill by adding the following section:

“SECTION 173. Chapter 90 Section 8 is hereby amended by adding after the words ‘expire on March first’ in line 197 the following sentence:- The Registrar shall notify the license holder of the expiration date 30-60 days prior to the expiration of said license. The Registrar will send notice by United States mail to the last known mailing address of said individual.”.

After remarks the amendment was adopted.

Ms. Polito of Shrewsbury then moved to amend the bill by adding the following section:

“SECTION 174. The Massachusetts Transportation and Infrastructure Authority must report to the chairs of the House and Senate Committees on Ways and Means in addition to the clerks of both branches within ninety days of the passage of this Act the number of employee positions and employees reduced as a result of the consolidation. After this initial report the Authority will continue to report to these committees annually on the 1st of July, the number of employees within the Authority.”.

Pending the question on adoption of the amendment, the same member moved that it be amended by striking out the proposed new section and inserting in place thereof the following:

“SECTION 174. The Massachusetts Transportation and Infrastructure Authority shall annually, not later than September 1, report to the chairs of the house and senate committees on ways and means on the efficiencies realized as a result of the implementation of this act, including without limitation, efficiencies realized pursuant to the provision of core services by the authority.”.

After remarks the further amendment was adopted, thus precluding a vote on the

pending amendment.

Mr. Kulik of Worthington then moved to amend the bill in line 349, after the word “transportation”, and also in line 354, after the following: “(7)”, by inserting, in each instance, the words “working in coordination with the regional planning agencies”, in line 802, after the word “commonwealth”, by striking out the word “, and” and inserting in place thereof the word “which”, and in line 840, after the word “transportation”, by inserting the words “working in coordination with the regional planning agencies and the metropolitan planning organization”.

The amendments were adopted.

Mr. Smizik of Brookline then moved to amend the bill by adding the following section:

“SECTION 175. Green Roads Study Commission.

Section 1. There is hereby established a special commission, to be referred to as the Green Roads Commission, for the purpose of making an investigation and study relative to the creation of a statewide, interagency, interdisciplinary Green Roads Plan to revitalize roadways throughout the Commonwealth through the implementation of sustainable road construction practices. The Green Roads Commission shall consist of 15 members, 2 of whom shall be appointed by the Speaker of the House of Representatives, 2 of whom shall be appointed by the Senate President, and 11 of whom shall be appointed by the Governor, including the Secretary of the Department of Transportation, who shall serve as the chairperson; the Undersecretary of Transportation for Highways, the Director of the Office of Transportation Planning; the Secretary of the Executive Office of Energy and Environmental Affairs; the Commissioner of the Massachusetts Department of Environmental Protection; the Commissioner of the Department of Energy Resources; 1 member from the Metropolitan Area Planning Council; 1 member of an environmental advocacy group with experience in experience in transportation planning; 1 member representing the road construction industry; 1 member representing the electricity generation industry; and 1 member representing the alternative surface transportation fuels industry.

Section 2. The Green Roads Commission, as part of its review, analysis and study, shall focus on and consider the economic and technical feasibility, benefits, and potential drawbacks of the following issues and proposals, including an analysis of how they may aid the Commonwealth in achieving its goals as established in Chapter 21N of the General Laws and Chapter 169 of the Acts of 2008:

(i) The implementation of advanced surface roadways materials on state and municipal highways and roads;

(ii) The replanting of native vegetation alongside roadways after roadway construction or expansion;

(iii) The siting of clean energy production facilities along and on the side of roadways;

(iv) The redesign and rebuilding of service stations both at rest stops along roadways and in surrounding communities to accommodate advanced fuels, advanced fuel vehicles, and alternative technology vehicles;

(v) The powering of all roadside, rest stop, and service station lighting with renewable energy generated onsite; and

(vi) The redesign of service stations to include grey water and water reuse and recapture facilities.

Section 3. The commission shall submit its findings, together with any legislation necessary to implement its findings, to the Clerks of the House of Representatives and the Senate by no later than December 31, 2010.”.

The amendment was rejected.

Mr. Smizik then moved to amend the bill in line 885 by inserting after the word “pollutants” the words “, to prepare for climate change adaptation”; and the amendment was adopted.

The same member then moved to amend the bill in line 849 by inserting after the word “gases.” the following sentence: “Such planning shall include comprehensive climate change adaptation planning to ensure that the commonwealth’s transportation infrastructure is designed to tolerate increased environmental stress due to climate change, including, but not limited to increased temperatures, increased stormwater runoff, and extreme weather events.”; and the amendment was adopted.

Mr. Smizik of Brookline then moved to amend the bill in line 852, after the word “for”, by inserting the words “and implementation of measures that facilitate”; and the amendment was adopted.

Ms. Malia of Boston then moved to amend the bill in line 261 by inserting after the following: “268A.” the following two sentences: “Each meeting shall provide a sufficient opportunity for public comment. The agendas for each meeting shall be posted online at least 24 hours before the meeting and written materials provided to directors for the meeting shall be available at the meeting for the public.”.

The amendment was rejected.

Ms. Malia of Boston then moved to amend the bill by striking out section 96 (as printed) and inserting in place thereof the following section:

“SECTION 95. Chapter 161A of the General Laws, as so appearing, is hereby amended by striking out section 7 and replacing it with the following section:-

Section 7. The authority shall be governed and its corporate powers exercised by a board of directors. The authority shall consist of the governor, who shall serve as chairperson, and 4 additional members appointed by the governor for a term of 3 years, 2 of whom shall be experts in the field of public or private transportation finance; 1 of whom shall have practical experience in transportation planning and policy; and 1 of whom shall be a registered civil engineer with at least 10 years experience. The membership of the Board shall include at least one person experienced in environmental protection, and at least one person who is an MBTA rider. The MBTA rider member shall be a resident of the area constituting the authority and shall use authority transit services regularly. Any person appointed to fill a vacancy in the office of a member of the board shall be appointed in a like manner and shall serve for only the unexpired term of such member. Any member shall be eligible for reappointment. Any member may be removed from his appointment by the governor for cause. The Governor may appoint a designee pursuant to section 6A of chapter 30. A majority of the directors shall constitute a quorum, which shall be required to take any particular action. The directors shall meet monthly, provided that said meeting shall occur no later than the fifteenth day of the month. Each meeting shall provide a sufficient opportunity for public comment. The agendas for each meeting shall be posted online at least 24 hours before the meeting. Written materials provided to directors for the meeting shall be available at the meeting for the public.”.

The amendment was rejected.

Mr. Brownsberger of Belmont then moved to amend the bill by striking out the paragraph contained in lines 236 to 250, inclusive, and inserting in place thereof the following paragraph:

“(b) The authority shall be governed and its corporate powers exercised by a board of directors. The authority shall consist of the governor, who shall serve as chairperson, and 6 additional members appointed by the governor for a term of 3 years, 2 of whom

shall be experts in the field of public or private transportation finance; 2 of whom shall have practical experience in transportation planning and policy, one of whom shall be nominated by the metropolitan area planning council and one of whom shall be nominated by the massachusetts association of regional planning agencies, provided that the member does not reside in a municipality that is a member of the metropolitan area planning council; 1 of whom shall be a representative of an environmental organization and 1 of whom shall be a registered civil engineer with at least 10 years experience. Any person appointed to fill a vacancy in the office of a member of the board shall be appointed in a like manner and shall serve for only the unexpired term of such member. Any member shall be eligible for reappointment. Any member may be removed from his appointment by the governor for cause. The board shall annually elect 1 of its members to serve as vice-chairperson and 1 to serve as treasurer. The Governor may appoint a designee pursuant to section 6A of chapter 30; provided, however that said designee shall not be an employee of the authority, department or any division thereof.”.

The amendment was rejected.

Mrs. Haddad of Somerset being in the Chair, —

Mr. Sullivan of Fall River then moved to amend the bill in line 827, after the word “practicable.”, by inserting the following three sentences: “Said plan shall include an analysis of the operation of each regional transit authority, with the purpose of identifying ways in which each regional transit authority can improve efficiency of existing service, and provide new or expanded services to the communities. The analysis shall include an examination of the ridership per vehicle in each regional transit authority to determine the feasibility of converting fleets from large buses to smaller, more energy-efficient vehicles. The analysis shall identify the potential reduction in operating costs that such a conversion could provide for each regional transit authority, and shall outline the ways in which costs savings attained by this conversion could then be applied to improve service by expanding service areas and increasing hours of service.”.

The amendment was adopted.

Mr. Jones of North Reading and other members then moved to amend the bill in line 3141, after the word “transportation.”, by inserting the following clause:

“(e) Prior to any transfer of assets owned by the Massachusetts turnpike authority, the undersecretary of the division of highways, in consultation with the Treasurer of the commonwealth and the executive director of the pension reserves investment management board, shall study and assess current market value of real property under the ownership, possession, and control of the Massachusetts turnpike authority, including but not limited to, any land or buildings, and determine whether such assets are surplus to the operation of the Turnpike or Metropolitan highway system, as defined by section 1 of chapter 6C, and whether such assets present the potential to meet the pension fund’s assumed rate of return for investments. Any such assets deemed to be both surplus and as presenting the potential to meet the pension fund’s assumed rate of return for investments, prior to being transferred to the division, may be purchased at the current market value by the pension fund, subject to the approval of the undersecretary of the division of highways and the pension reserves investment management board. Any proceeds generated from such a sale shall be deposited in the Massachusetts Transportation and Infrastructure Fund, established pursuant to section 4 of chapter 6C.”.

After remarks the amendment was adopted.

Mr. Jones and other members then moved to amend the bill by inserting after

section 11 (as printed) the following section:

“SECTION 9A. Chapter 7 of the General Laws is hereby amended by adding the following 14 sections:-

Section 57. As used in sections 57 to 70, inclusive, the following words shall have the following meanings, unless the context clearly requires otherwise:-

(a) ‘Affected jurisdiction’, any city or town, or other unit of government within the commonwealth in which all or part of a transportation facility is located or any other public entity directly affected by the transportation facility.

‘Architectural and engineering services’,: (1) professional services of an architectural or engineering nature, as defined by applicable state law, which are required to be performed or approved by a person licensed, registered or certified to provide such services as described in this definition; (2) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration or repair of real property; and (3) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions and employees thereof may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services.

‘Authority’, the Massachusetts Transportation and Infrastructure Authority.

‘Construction’, the process of building, altering, repairing, improving or demolishing any transportation facility, including any structure, building or other improvements of any kind to real property. ‘Construction’ shall not include the routine operation, routine repair or routine maintenance of any existing transportation facility, including structures, 393 buildings or real property.

‘Force majeure’, an uncontrollable force or natural disaster not within the power of the operator or the commonwealth.

‘Contract’, any agreement, including a public-private agreement for the procurement, operation or disposal under sections 57 to 70, inclusive, of a transportation facility by the authority.

‘Contract modification’, any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

‘Contractor’, any person having a contract with the authority under sections 57 to 70, inclusive.

‘Cooperative purchasing’, procurement conducted by, or on behalf of, an affected jurisdiction.

‘Design-build-finance-operate-maintain’, a project delivery method in which the authority enters into a single contract for design, construction, finance, maintenance and operation of a transportation facility over a contractually defined period. No public funds shall be appropriated to pay for any part of the services provided by the contractor during the contract period.

‘Design-building-operate-maintain’, a project delivery method in which the authority enters into a single contract for design, construction, maintenance and operation of a transportation facility over a contractually defined period. All or a portion of the funds required to pay for the services provided by the contractor during the contract period shall either be appropriated by the commonwealth or by the

authority prior to award of the 416 contract or secured by the commonwealth or by the authority through fare, toll or user charges.

‘Design requirements’, the written description of the transportation facility or service to be procured under sections 57 to 70, inclusive, including:

(1) required features, functions, characteristics, qualities and properties required by the authority;

(2) the anticipated schedule, including start, duration and completion; and

(3) estimated budgets as applicable to the specific procurement for design, construction, operation and maintenance; provided, however, that design requirements may, include drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project.

‘Independent peer reviewer services’, additional architectural and engineering services provided to the authority in design-build-operate-maintain or design-build-finance-operate-maintain procurements to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care.

‘Maintenance’, includes routine operation, routine maintenance, routine repair rehabilitation, capital maintenance, maintenance replacement and any other categories of maintenance that may be designated by the authority.

‘Material default’, failure of a contractor to perform any duties under a public-private agreement which jeopardizes delivery of adequate service to the public and remains unsatisfied after a reasonable period of time and after the operator has received written notice from the authority of the failure.

‘Operate’, any action to operate, maintain, repair, rehabilitate, 439 improve, equip or modify a transportation facility, including the design and construction of repairs, improvements or modifications to a transportation facility.

‘Operator’, a private entity that has entered into a public-private agreement to provide design-build-finance-operate-maintain or design-building-operate-maintain services under sections 57 to 70, inclusive.

‘Private entity’, a natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity or other business entity.

‘Proposal development documents’, drawings and other design related documents that are sufficient to fix and describe the size and character of a transportation facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

‘Public-private agreement’, the contract between a private entity and the authority that relates to the development, financing, maintenance or operation of a transportation facility subject to sections 57 to 70, inclusive.

‘Request for proposals’, all documents, whether attached to or incorporated by reference, utilized for soliciting proposals for a transportation facility under sections 57 to 70, inclusive.

‘Responsible bidder or offeror’, a person who has the capability in all respects to fully perform the contract requirements, and the integrity and reliability to assure good faith performance.

‘Responsive bidder’, a person who has submitted a bid which conforms 461 in all material respects to the invitation for bids.

‘Transportation facility’, new or existing highway, road, bridge, tunnel, overpass, ferry, airport, public transportation facility, terminal facility, vehicle parking facility, seaport facility, rail facility, intermodal facility or similar facility open to the public and

used for the transportation of persons or goods, and any building, structure or networks of buildings, structures, pipes, controls and equipment that provide transportation services, including rolling stock and equipment, and any building, structure, parking area, appurtenances or other property needed to operate such facility that is subject to a public-private agreement.

‘User fees’, the rate, toll, fee or other charges imposed by an operator or by the authority for use of all or part of a transportation facility.

‘Utility’, a privately, publicly or cooperatively owned line, facility or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public.

Section 58. (a) Notwithstanding any general or special law to the contrary, the board of directors of the authority, in conjunction with the special public-private partnership infrastructure oversight commission established in section 70, may solicit proposals enter into contracts for design-build-finance-operate-maintain or design-building-operate-maintain services with that responsible and responsive offeror submitting the proposal that is most advantageous to the authority through the sale, lease, operation and maintenance of a transportation facility within the commonwealth; provided, however, that such proposal shall be in full compliance with all applicable requirements of federal, state and local law, including section 484 26 to 27H, inclusive, of chapter 149; provided further, that any such contract shall not be subject to the competitive bid requirements set forth in sections 38A½ to 38O, inclusive, section 39M of chapter 30, or sections 44A to 44M, inclusive, of chapter 149; and provided further, that each such contract shall be awarded pursuant to chapter 30B except for clause (3) of paragraph (b) and paragraphs (e) and (g) of section 6, clause (4) of section 13 and section 16 of said chapter 30B.

(b) (1) In soliciting and selecting a private entity with which to enter into a public-private agreement for design-build-finance-operate-maintain or design-building-operate-maintain services, the authority shall utilize the following competitive sealed proposals procurement approach:

(2) each request for proposals for design-building-operate-maintain and design-build-finance-operate-maintain services:

(A) shall include design requirements;

(B) shall solicit proposal development documents; and

(C) may, if the authority determines that the cost of preparing proposals is high, considering the size, estimated price and complexity of the procurement:

(i) prequalify offerors by issuing a request for qualifications in advance of the request for proposals; and

(ii) select a short list of responsible offerors prior to discussions and evaluations, provided that the number of proposals that will be shortlisted is stated in the request for proposals and prompt public notice is provided to all offerors as to which proposals have been shortlisted; Or

(iii) pay stipends to unsuccessful offerors; provided, however, that the amount of such stipends and the terms under which such stipends shall be paid shall be included in the request for proposals;

(3) adequate public notice of the request for proposals shall be provided;

(4) proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation and a register of proposals shall be prepared

by the authority and shall be open for public inspection after contract award; and

(5) (A) The request for proposals shall state the relative importance of price and other factors and sub-factors, if any. (B) Each request for proposals for design-building-operate-maintain and design-build-finance-operate-maintain: (i) shall state the relative importance of:

- (1) demonstrated compliance with the design requirements;
- (2) offeror qualifications;
- (3) financial capacity;
- (4) project schedule;
- (5) elimination of existing public debt with respect to the transportation facility;
- (6) lowest user charges or price over the term of the design-building-operate-maintain and design-build-finance-operate-maintain contract; and
- (7) other factors, if any;

(ii) shall, if the contract price is estimated to exceed \$10,000,000, if the contract period of operations and maintenance is 5 years or longer, or if circumstances established by the authority, require each offeror to identify an independent peer reviewer whose competence and qualifications to provide such services shall be an additional evaluation factor in the award of the contract; and

(iii) shall not include, as an evaluation factor in the award of the 526 contract, the amount, if any, paid by a contractor to the authority for procurement using design-building-operate-maintain and design-build-finance-operate-maintain.

(6) As provided in the request for proposals, and under regulations issued by the authority, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(7) Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the acquiring agency, taking into consideration the price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis upon which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly provided to all offerors.

(8) The authority may provide debriefings that furnish the basis for the source selection decision and contract award.

(c) (1) A private entity may request a review, prior to submission of a solicited proposal, by the authority of information that the private entity has identified as confidential or proprietary to determine whether such information is subject to disclosure under section 10 of chapter 66 or clause twenty sixth of section 7 of chapter 4.

(2) The authority shall take appropriate action to protect confidential or proprietary information that a private entity provides as part of a solicited proposal and that is exempt from disclosure under said section 10 of chapter 66 and said clause twenty sixth of said section 7 of said chapter 4.

Section 59. (a) The request for proposals shall contain the proposed form of contract or Public-private agreement to be executed between the successful offeror and

the authority upon award, and shall have been approved as to content and form by the special public-private infrastructure oversight commission and by the authority before the request for proposals is issued, pursuant to section 58. The inspector general and the attorney general shall have 30 days from the receipt of a draft of the proposed form of contract to notify the special public-private infrastructure oversight commission in writing of any material objections to the draft form of contract. Before issuing any request for proposal, the authority shall prepare a written response to reports submitted to it by the special public-private infrastructure oversight commission which response shall state the basis for any substantial divergence between the actions of the authority and the recommendations contained in such reports of said commission. The authority and the successful offeror shall only make nonmaterial changes in the content and form of the public private agreement contained in the request for proposals.

(b) (1) After selecting a solicited or unsolicited proposal for a public-private initiative, the authority shall enter into the public-private agreement for the subject transportation facility with the selected private entity.

(2) An affected jurisdiction may be a party to a public-private agreement entered into by the authority and a selected private entity or combination of private entities.

(c) A public-private agreement under sections 57 to 70, inclusive, 571 shall provide for the following:

(1) the planning, acquisition, engineering, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing or operation of a transportation facility including provisions for the replacement and relocation of utility facilities;

(2) the term of the public-private agreement, which shall not exceed 50 years without written approval of the governor;

(3) the type of property interest, if any, the private entity shall have in the transportation facility;

(4) a description of the actions the authority may take to ensure proper maintenance of the transportation facility;

(5) whether user fees will be collected on the transportation facility and the basis by which such user fees shall be determined and modified;

(6) compliance with applicable Federal, state and local laws;

(7) grounds for termination of the public-private agreement by the authority or operator;

(8) procedures for amendment of the agreement by mutual agreement and for changes in the agreement by written order from the authority.

(9) review and approval by the authority of the operator's plans for the development and operation of the transportation facility;

(10) inspection by the authority and the independent peer reviewer of the design and construction of, or improvements to, the transportation facility;

(11) maintenance by the operator of a policy of liability insurance or self-insurance reasonably acceptable to the authority;

(12) filing by the operator, on a periodic basis, of appropriate financial statements in a form acceptable to the authority;

(13) filing by the operator, on a periodic basis, of traffic reports, service quality standards as defined in section 3 of chapter 81D, ridership reports, on time performance reports, or other reports identified by the authority, in a form acceptable to the authority;

(14) financing obligations of the operator and the authority;

(15) apportionment of expenses between the operator and the authority;

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(16) the rights and duties of the operator, the authority, and other state and local governmental entities with respect to use of the transportation facility;

(17) the rights and remedies available in the event of default or delay;

(18) the terms and conditions of indemnification of the operator by the authority, as required by applicable law;

(19) assignment, subcontracting or other delegation of responsibilities of the operator or the authority under the agreement to third parties, including other private entities and other state agencies;

(20) sale or lease to the operator of private property related to the transportation facility;

(21) if, and how, the parties shall share costs of development of the project;

(22) if, and how, the parties shall allocate financial responsibility for cost overruns;

(23) liability for nonperformance;

(24) any incentives for performance;

(25) any accounting and auditing standards to be used to evaluate progress on the project;

(26) the operator's plans to obtain a labor and material payment bond, in accordance with section 29 of chapter 149 of the General Laws, covering all construction, reconstruction, or maintenance, including capital maintenance, work of the project and require the payment of prevailing wages for labor performed on the project in accordance with sections 26 to 27H, inclusive, of said chapter 149;

(27) the operator's plans for labor harmony for the entire term of the agreement, including construction, reconstruction and capital and routine maintenance and adequate remedies to address the operator's failure to maintain labor harmony which shall include, but not be limited to, assessment of liquidated damages and contract termination.

(28) traffic enforcement and other policing issues, subject to section 66 including any reimbursement by the private entity for such services; and

(29) other terms and conditions.

Section 60. Upon the end of the term of the public-private agreement or in the event of termination of the public-private agreement, the authority and duties of the operator shall cease, except for any duties and obligations that extend beyond the termination as provided in the public-private agreement, and all the rights, title and interest in such transportation facility shall revert to the authority and shall be dedicated to the authority for public use.

Section 61. (a) Upon the occurrence and during the continuation of a material default by an operator, not caused by an event of force majeure, and upon the failure by the contractor or its financing institution on the contractor's behalf, to cure such material default within 30 days of written notice of such default by the authority, the authority may:

(1) elect to take over the transportation facility, including the succession of all right, title and interest in the transportation facility; and

(2) terminate the public-private agreement and exercise any other rights and remedies available.

(b) In the event that the authority elects to take over a transportation facility under subsection (a), the authority:

(1) shall make interim payments, on behalf of the contractor and for the contractor's account, of any amounts subject to a mechanics lien law of the commonwealth;

(2) may develop and operate the transportation facility, impose user fees for the use of the transportation facility, and comply with any service contracts; and

(3) may solicit proposals for the maintenance and operation of the transportation facility under section 58.

Section 62. (a) (1) The authority may issue and sell bonds or notes of the authority for the purpose of providing funds to carry out sections 57 to 70, inclusive, with respect to the development, financing or operation of a transportation facility or the refunding of any bonds or notes, together with any costs associated with the transaction.

(2) Any bond or note issued under this section:

(A) constitutes the corporate obligation of the authority;

(B) shall not constitute a debt of the commonwealth within the meaning or application of the constitution of the commonwealth; and

(C) shall be payable solely as to both principal and interest from:

(i) the revenues from a lease to the authority, if any;

(ii) proceeds of bonds or notes, if any;

(iii) investment earnings on the proceeds of bonds or notes; or

(iv) other funds available to the authority for such purpose.

(b) (1) For the purpose of financing a transportation facility, 662 the authority and operator may apply for, obtain, issue and use private activity bonds available under any Federal law or program.

(2) Any bonds, debt, other securities or other financing issued for the purposes of sections 57 to 70, inclusive, shall not be considered a debt of the commonwealth or any political subdivision thereof state or a pledge of the faith and credit of the state or any political subdivision of the commonwealth.

(c) Nothing in this section shall limit a local government or any authority of the commonwealth to issue bonds for transportation projects.

Section 63. (a) (1) The authority may accept from the United States or any of its agencies funds that are available to the commonwealth for carrying out sections 57 to 70, inclusive, whether the funds are made available by grant, loan or other financial assistance.

(2) The authority may enter into agreements or other arrangements with the United States or any of its agencies as may be necessary for carrying out the purposes of sections 57 to 70, inclusive.

(b) The authority may accept from any source any grant, donation, gift, or other form of conveyance of land, money, other real or personal property, or other item of value made to the commonwealth or the authority for carrying out the purpose of sections 57 to 70, inclusive.

(c) Any transportation facility may be financed in whole or in part by contribution of any funds or property made by any private entity or affected jurisdiction that is party to a public private agreement under sections 57 to 70, inclusive.

(d) The authority may combine Federal, state, local and private funds to finance a transportation facility under sections 57 to 70, inclusive.

Section 64. (a) Section 9 of 685 chapter 81B shall apply to: (1) a transportation facility; and

(2) tangible personal property used exclusively with a transportation facility that is:

(A) owned by the authority and leased, licensed, financed or otherwise conveyed to an operator; or

(B) acquired, constructed or otherwise provided by an operator on behalf of the authority.

Section 65. The authority may exercise the power of eminent domain to acquire property, rights of way or other rights in property for transportation projects that are part of a public-private agreement for design-build-finance-operate-maintain or design-build-operate-maintain services.

Section 66. (a) Law enforcement officers of the commonwealth and of an affected local jurisdiction shall have the same powers and jurisdiction within the limits of a transportation facility as they have in their respective areas of jurisdiction and access to the transportation facility at any time for the purpose of exercising such powers and jurisdiction.

(b) The traffic and motor vehicle laws of the commonwealth and, if applicable, any local By laws or ordinances shall apply to a transportation facility.

Section 67. An operator under sections 57 to 70, inclusive, and any utility whose facility is to be crossed or relocated shall cooperate fully in planning and arranging the manner of the crossing or relocation of the utility facility. This section shall not limit or otherwise affect the right of such utility to compensation for such relocation to the extent provided by law.

Section 68. Nothing in sections 57 to 70, inclusive, shall limit any waiver of the sovereign immunity of the commonwealth or any officer or employee of the commonwealth with respect to the participation in or approval of all or any part of the transportation facility or its operation.

Section 69. The authority may adopt rules and regulations to carry out sections 57 to 70, inclusive.

Section 70. There shall be established a special public-private partnership infrastructure oversight commission to comment on and approve all requests for proposals for design-build-finance-operate-maintain or design-building-operate-maintain services, pursuant to section 59.

The commission shall have 9 members, none of whom shall be employees of the executive branch, members of the General Court, nor employees of the Legislature, including the following: 4 members who shall reside in different geographic regions of the commonwealth, to be appointed by the governor to service terms of 2 years; 1 member, who shall not be a member of the general court, to be appointed by the president of the senate to serve a term of 2 years; 1 member, who shall not be a member of the general court, to be appointed by the speaker of the house of representatives to serve a term of 2 years; 1 member who shall not be an employee of the department of the state treasurer, to be appointed by the treasurer, to serve a term of 2 years; the state auditor, or his designee; and 1 representative from the Massachusetts Organization of State Engineers and Scientists, to serve a term of 2 years. Each of the members of the commission shall be an expert with experience in the fields of transportation law, public policy, public finance, management consulting, transportation, or organizational change. One of the members appointed by the governor shall be an expert in the field of public finance. One of the members appointed by the governor shall be an expert in the field of management consulting or organizational change. One of the members appointed by the governor shall be an expert in the field of transportation. One of the members shall be appointed by the governor to serve as chairperson of the commission. The members appointed by the governor may be eligible for reappointment, provided however that no member appointed by the governor may serve more than three terms. The members of the commission shall be appointed no later than August 30, 2009. No member shall have served as a legislative agent for the period of 5 years prior to his appointment. No director shall have been a registered legislative agent, as defined in section 39 of

chapter 3 for a period of at least 5 years prior to his appointment, no director shall have been a member or employee of the general court or an employee of the executive branch for a period of 2 years prior to his appointment, and no director shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment. Whenever the authority notifies the commission of its intent to issue a request for proposal for design-build-finance-operate-maintain or design-building-operate-maintain services, the authority shall submit a draft of the request for proposal to the commission for its review and approval. As provided in section 58, no request for proposal shall be issued by the authority for a public-private agreement for design-build-finance-operate-maintain or design-build-operate-maintain services without the commission's written approval. The commission shall provide an initial written response to the request for proposal within 15 days. For each request for proposal for design-build-finance-operate-maintain or design-building-operate-maintain services, the commission shall report on issues surrounding the request for proposal, including, but not limited to: (1) the status of current employees; (2) the policy and regulatory structure for overseeing a privately operated transportation facility and ongoing legislative oversight; (3) issues of taxation, profitsharing and resolution of new revenue producing ideas; (4) advertising and marketing; (5) use of new technologies; (6) lease terms and termination clauses; (7) additional responsibilities by both the private infrastructure operator and the commonwealth during the lease period; (8) the financial valuation of the commonwealth transportation facility; and (9) the anticipated advantages of entering into the anticipated public private agreement for design-build-finance-operate-maintain or design-building-operate-maintain services.

The report shall be delivered within 30 days of the commission's approval of a request for proposal for design-build-finance-operate-maintain or design-building-operate-maintain services to the secretary for administration and finance, the house committee on ways and means, the senate committee on ways and means, the chairmen of the joint committee on transportation, and the state auditor.

In order to submit the commission's written approval of a request for proposal for design build finance operate maintain or design build operate maintain services to the state auditor, the commission's process shall be sufficient to satisfy the requirements of sections 52 to 55, inclusive.

Whenever the comments and recommendations of the state auditor are required for any action by the authority, under sections 52 to 55, inclusive, of chapter 7, that approval shall be deemed to have been granted within 30 days of submission thereof, unless the state auditor has communicated his disapproval to the authority, in writing. The state auditor's report shall include reasons why such proposed request for proposal is financially detrimental to the commonwealth and how the commission erred in its findings.

Any research, analysis or other staff support that the commission reasonably requires shall be provided by the Massachusetts Transportation and Infrastructure Authority."

After remarks the amendment was adopted.

At a quarter before six o'clock P.M., the Chair (Mrs. Haddad of Somerset) declared a recess until half past six o'clock; and at that time the House was called to order with Mrs. Haddad in the Chair.

The Chair thereupon declared a further recess until the hour of seven o'clock; and at that time the House was called to order with Mrs. Haddad in the Chair.

Mr. Wagner of Chicopee thereupon asked for a count of the House to ascertain if a

Recesses.

Quorum.

quorum was present. The Chair (Mrs. Haddad of Somerset), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 153 members were recorded as being in attendance.

Quorum,—
yea and nay
No. 54.

[See Yea and Nay No. 54 in Supplement.]

Therefore a quorum was present.

Representatives O’Flaherty of Chelsea and Reinstein of Revere then moved to amend the bill in line 3410, after the word “act.”, by inserting the following four sentences: “On and after the effected date of this act, the authority shall not amend existing or negotiate any new payment in lieu of tax (PILOT) agreements. Any PILOT payments that exist as of the effective date shall continue to be paid by the authority until the transfer of the bridge is completed. Upon transfer of the bridge, the amount called for in the last payment of any PILOT still in effect as of the effected date of this act, whether that final payment was subsequently paid or is still due, shall be the basis for the conversion of PILOT payments into final, one-time payments calculated upon the present day value of a twenty-five year schedule of PILOT payments, and paid by the Massachusetts Transportation and Infrastructure Authority to the receiving parties of the PILOT agreements. Once the final, one-time PILOT payments are made, the Massachusetts Transportation and Infrastructure Authority shall not be required to enter into any new PILOT agreements.”.

The amendment was adopted.

Mr. Dempsey of Haverhill then moved to amend the bill in line 1752 by striking out the figures “10,000,000” and inserting in place thereof the figures “25,000,000”.

The amendment was adopted.

After remarks on the question on passing the bill, as amended, to be engrossed, in concurrence (Mr. Vallee of Franklin being in the Chair), Mr. Cabral of New Bedford moved to amend it in lines 2006 to 2036, inclusive, by striking out the four paragraphs contained in subsection 69 (as printed) and inserting in place thereof the following four paragraphs:

“Section 68. (a) The undersecretary shall establish a gateway cities assistance program to assist cities and towns with more than 35,000 inhabitants but fewer than 225,000 inhabitants where (1) the unemployment rate is higher than the statewide average, (2) the median income of the city or town is less of the state median income, (3) the per capita income is below the state average per capita income, and (4) the percentage of the city or town’s population having attained at least a bachelor’s degree is below the state percentage of population having attained at least a bachelor’s degree, in undertaking projects to design, construct, reconstruct, widen, resurface, rehabilitate and otherwise improve roads, bridges, railways, airports, seaports, intermodal transit facilities and other related public works facilities as deemed necessary for economic development by the department upon the petition of an appropriate local governmental body in accordance with this section and any rules or regulations promulgated by the secretary in accordance with this section. The rules and regulations shall govern the criteria by which the funds shall be distributed and the method by which a municipality may apply for such funds.

(b) The undersecretary may, subject to appropriation, commit the funds pursuant to this section by executing a grant or other contractual agreement with a municipality and, upon execution, the funds so committed shall be made available as a grant directly to the municipality which has entered into an agreement without further review or approval of the division. Each agreement shall contain assurances satisfactory to the

director that the municipality will award a construction contract for the project which is the subject of the agreement not later than 180 days after the date of execution of the agreement.

(c) In the event that a contract is not awarded by the municipality within the period provided in subsection (b), the undersecretary may require, by written notification to the municipality, that the funds paid to it by the commonwealth pursuant to the agreement shall be returned forthwith to the commonwealth.

(d) The undersecretary may, through execution of a grant or other contractual agreement as provided in subsection (b), commit an amount of funds up to but not exceeding the aggregate amount of funds returned by municipalities under subsection (c) to any other municipality which has otherwise complied with the applicable requirements for such projects, including the terms and conditions provided in this section.”

The amendment was adopted.

Mr. Sciortino of Medford then moved to amend the bill in line 1815, at the end of subsection 55 (as printed), after the word “administration.”, by inserting the following subsection:

“Section 54A. There shall be within the Mass Transit division a ridership advocate. The ridership advocate shall serve without compensation and may attend all meetings of the board of the authority, all meetings of any subsidiary board or committee, and all meetings of any board or committee within the Massachusetts bay transportation authority established in chapter 161A. The ridership advocate shall be granted access to all authority reports and financial documents. The ridership advocate shall advocate on behalf of the riders of the public transit system to ensure that the public transit system maintains high standards of quality and punctuality.”

The amendment was adopted.

The same member then moved to amend the bill by striking out section 97 (as printed); and the amendment was adopted.

Mr. Sciortino then moved to amend the bill in line 3330 by striking out the words “, the Massachusetts bay transportation authority.”.

The amendment was adopted

Ms. Wolf of Cambridge then moved to amend the bill in line 1630, after the word “interns.”, by inserting the following sentence: “Every effort shall be made to recruit qualified persons who reflect the diversity of the Commonwealth.”.

The amendment was adopted.

Mr. Bradley of Hingham then moved to amend the bill by adding the following section:

“SECTION 175. Sections 110, 111, 112 and 113 shall apply only to causes of action arising on or after July 1, 2009.”.

The amendment was adopted.

Mr. Bosley of North Adams and other members then moved to amend the bill in line 915, after the words “technology division”, by inserting the words “or separate offices, divisions, and authorities within the authority”.

The amendment was adopted.

Mr. Bosley and other members then moved to amend the bill in line 636, after the word “department.”, by inserting the following sentence: “The authority may use programs and services offered by the separate offices, divisions, and authorities within the authority to aid in its development of integrated core administrative services”. The amendment was rejected.

Representatives Fennell of Lynn and Sandlin of Agawam then moved to amend

the bill by striking out section 26 (as printed); and the amendment was adopted.

Representatives Brownsberger of Belmont and Walz of Boston then moved to amend the bill, in line 1705, at the end of subsection 49 (as printed), after the word “means.”, by inserting the following two subsections:

“Section 48A. The division shall submit to the road and bridge advisory board, pursuant to section 51, all contracts, plans, agreements, requests for proposals and memoranda of understanding relative to land use plans, air rights, zoning restrictions and environmental impacts associated with the development on any land owned by the division within the turnpike and the metropolitan highway system. The road and bridge advisory board shall, within 30 days from receipt of all contracts, plans, agreements and memoranda of understanding submitted by the division for review, provide comments and recommendations to the division. The division shall prepare a written response to the reports of the road and bridge advisory board and shall state the basis for any substantial divergence between the actions of the division and the recommendations contained in such reports of the road and bridge advisory board. The division shall not proceed with the final execution of such contracts, plans, agreements, requests for proposals, and memoranda of understanding prior to the review of the advisory board pursuant to section 51.

Section 48B. (a) There shall be a road and bridge advisory board to the division to consist of 13 members, 5 of whom shall be appointed by the governor, 1 of which shall be a resident of a municipality within the turnpike corridor from the New York state border east to the junction of interchange 8, 1 of which shall be a resident of a municipality within the turnpike corridor from the junction of interchange 8 east to the junction of interchange 14, 1 of which shall be a resident of Essex or Middlesex county provided that the member does not reside in a municipality that is a member of the metropolitan area planning council, 1 of which shall be a resident of Norfolk, Plymouth or Bristol county provided that the member does not reside in a municipality that is a member of the metropolitan area planning council, 2 of whom shall be appointed by the mayor of the city of Boston, 1 of whom shall be appointed by the commissioner of the division of capital asset management and maintenance, 2 of whom shall be appointed by the metropolitan area planning council, 1 of which shall be a resident of the metrowest subregion of the metropolitan area planning council, 2 of whom shall be appointed by the Massachusetts Association of Planning Directors who shall be a resident of a municipality within the turnpike corridor and 1 of whom shall be appointed by an environmental organization. Each member of the road and bridge advisory board shall have 1 vote. A majority of members shall constitute a quorum and the road and bridge advisory board may act by such majority vote represented in the quorum.

(b) For the conduct of its business, the road and bridge advisory board shall adopt and may revise and amend bylaws. The road and bridge advisory board shall convene its first meeting within 60 days after the transfer of the state highway system to the division and shall thereafter convene regular meetings in accordance with its bylaws.

The road and bridge advisory board shall annually elect a chairperson and

vice chairperson and any other officers that the road and bridge advisory board shall determine. Each member of the road and bridge advisory board shall serve for a term of 1 year and shall be eligible for reappointment. In the event of a vacancy, a successor shall be named by the person or organization who originally appointed the vacated member and such successor shall serve for the remainder of the unexpired term. Each member of the road and bridge advisory board shall serve without compensation but may be reimbursed, as an expense of said road and bridge advisory board, for all reasonable expenses incurred in the performance of its duties as approved by the road and bridge advisory board.

(c) The purposes of the road and bridge advisory board shall be:

(i) to review and prepare comments on all documents submitted to it pursuant to section 50 and to make recommendations to the division within 30 days of receipt of such documents;

(ii) to coordinate and share information and best practices in matters of the operation and maintenance of roads and bridges and the development of adjacent land and air rights;

(iii) to make recommendations to the division on tolls for its roads and bridges;

(iv) to hold hearings, which may be held jointly with the division at the discretion of the road and bridge advisory board and the division, on matters relating to the division;

(v) to review the annual report of the division and to prepare comments thereon to the division and the governor, and to make such examinations of the reports on the division's records and affairs as the road and bridge advisory board deems appropriate; and

(vi) to make recommendations to the governor and the general court respecting the division and its road and bridge programs. The road and bridge advisory board shall have all powers necessary or convenient to carry out and effectuate the forgoing purposes.

(d) The road and bridge advisory board may incur expenses, not to exceed \$50,000 annually for expenditures authorized under subsection (b) and for personnel and office expenses. Such expenses shall be paid by the division in the current fiscal year from its operating budget and, for each year thereafter, shall be provided for in the current expense budget of the division.

(e) The road and bridge advisory board shall be deemed to be a governmental body for purposes of, and shall be subject to, section 11A ½ of chapter 30A and shall also be subject to section 10 of chapter 66.”.

After remarks the amendment was adopted.

Ms. Provost of Somerville and other members then moved to amend the bill in line 3709, after the year “2008”, by inserting the words “or within one mile of the Port of Boston”; and the amendment was adopted.

Representatives Provost and Khan of Newton then moved to amend the bill in line 1432 by striking out the word “transit” and inserting in place thereof the word “transportation”; and the amendment was adopted.

Mr. Linsky of Natick and other members then moved to amend the bill by adding at the end thereof the following new section:

“SECTION 176. Chapter 6C of the General Laws is hereby amended by inserting

the following new section at the end of the Chapter:-

Real property of the authority if leased, used, or occupied in connection with a business conducted for profit, shall, at the discretion of the municipality for the privilege of such lease, use or occupancy, be valued, classified, assessed and taxed annually as of January first to the lessee, user or occupant in the same manner and to the extent as if such lessee, user or occupant were the owner thereof in fee. No tax assessed under this section shall be a lien upon the real estate to which it is assessed nor shall any tax be enforced by any sale or taking of such real estate but the interest of any lessee therein may be sold or taken by the collector of the city or town in which the real estate lies for the nonpayment of such taxes in the manner provided by law for the sale or taking of real estate for nonpayment of annual taxes. Such collector shall have for the collection of taxes under this section all other remedies provided by chapter sixty for the collection of annual taxes upon real estate.”.

The amendment was adopted.

The Chair (Mr. Vallee of Franklin) then placed before the House the question on suspension of Rule 1A in order that the House might continue to meet to meet beyond the hour of nine o’clock P.M.

On the question on suspension of Rule 1A, the sense of the House was taken by yeas and nays, as required under the provisions of said rule; and on the roll 133 members voted in the affirmative and 22 in the negative.

Suspension of
Rule 1A.

Rule 1A
suspended,—
Yea and nay No.
55.

[See Yea and Nay No. 55 in Supplement.]

Therefore Rule 1A was suspended.

Mr. Walsh of Boston then moved to amend the bill in lines 1741, 1742 and 1743 by striking out striking out the paragraph contained therein and inserting in place thereof the following paragraph:

“(c) Any relocation of facilities carried out under this section which is not performed by employees of the owner shall be subject to sections 26 to 27F inclusive of chapter 149 of the General Laws.”.

After remarks on the question on adoption of the amendment, the sense of the House was taken by the yeas and nays at the request of the same member; and on the roll call 138 members voted in the affirmative and 16 in the negative.

Amendment
adopted,—
yea and nay
No. 56.

[See Yea and Nay No. 56 in Supplement.]

Therefore the amendment was adopted.

Representatives Kaufman of Lexington and Atkins of Concord then moved that the bill be amended in line 876, after the word “asset.”, by inserting the following paragraph:

“Massport, Minuteman National Historical Park and Hanscom Area Town Selectmen (HATS) shall jointly undertake a study to determine the impact of current operations at Hanscom Field and any anticipated or proposed expansions to operations, facilities, and/or infrastructure at the Field on the environment (including but not limited to noise levels and air quality consequences of both air and associated road traffic,) on public health, on tourism, and on the unique historical treasures in and around the communities abutting the Field. Massport, Minuteman National Historical Park and HATS shall collaborate in the development of the study design, the choice of contractor to undertake the study, in the writing of the final report and in the development of recommendations to be filed with the Superintendent of the Park, HATS and the chairs of the legislature’s Joint Committee on Transportation by January 1, 2010.”.

The amendment was adopted.

Ms. Peisch of Wellesley then moved to amend the bill [A]by adding at the end thereof the following section:

“SECTION 176. Any tolls or fees charged to users of any road, highway, tunnel or bridge in the Commonwealth of Massachusetts shall be used only for the limited purposes of operating, maintaining, reconstructing and/or expanding the road, highway, bridge or tunnel on which the toll or fee is charged or collected.”.

Pending the question on adoption of the amendment, the same member and other members moved that it be amended by striking out the text of said amendment [at “A”] and inserting in place thereof the following: “in line 971, after the word “violation.”, at the end of subsection 14 (as printed), after the word “violation.”, by inserting the following two paragraphs:

“(b) The authority shall not charge or collect a toll for transit through the Callahan tunnel, the Sumner tunnel or the Ted Williams tunnel by official emergency vehicles of the commonwealth or any municipality, political subdivision or instrumentality thereof; provided further, that the authority may not charge and collect tolls for transit through the Callahan tunnel, the Sumner tunnel or the Ted Williams tunnel by private passenger vehicles registered in the East Boston section of the city of Boston or the South Boston section of the city of Boston, as the Boston transportation department has determined the geographical boundaries of said sections of Boston, that are greater than the tolls in effect for vehicles registered in said East Boston section at existing tunnel toll facilities on the effective date of section 14 of chapter 102 of the acts of 1995; provided further, that the authority may not charge and collect tolls for transit through the Callahan or Sumner tunnels to private passenger vehicles registered in the North End section of the city of Boston, as the Boston transportation department has determined the geographical boundaries of such section, that are greater than the tolls in effect for such transit through either the Sumner tunnel or Callahan tunnel for vehicles on the effective date of section 14 of chapter 102 of the acts of 1995; provided further, that the authority shall continue operation of the 50 per cent toll discount program approved by the Massachusetts Turnpike Authority board of directors in open meeting on June 28, 2002 for account holders who participate in the authority's electronic toll collection system; and provided further, that the tolls collected for transit over or through the Maurice J. Tobin Memorial Bridge by private passenger vehicles registered in the city of Chelsea or the Charlestown neighborhood of the city of Boston shall not be greater than the tolls in effect for such vehicles as of January 1, 2009 pursuant to the Resident Commuter Permit Program, so called.

(c) All revenue received from tolls, rates, fees, rentals, and other charges for transit over or through all tolled roads, bridges or tunnels shall be applied exclusively to: (i) the payment of existing debt service on said tolled roads; and (ii) the cost of owning, maintaining, repairing, reconstructing, improving, rehabilitating, policing, using, administering, controlling and operating said tolled roads.”.

After debate on the question on adoption of the further amendment, the sense of the House was taken by the yeas and nays at the request of the same member; and on the roll call (Mr. Petrolati of Ludlow being in the Chair) 122 members voted in the affirmative and 32 in the negative.

[See Yea and Nay No. 57 in Supplement.]

Therefore the further amendment was adopted, thus precluding a vote on the pending amendment.

Mr. Walsh of Boston then moved to amend the bill in lines 972 to 1000, inclusive, by striking out subsection 15 (as printed) and inserting in place thereof the following six subsections:

Further amendment adopted,—
yea and nay
No. 57.

“Section 15. The Authority and its employees shall be subject to the provisions of chapter one hundred and fifty E of the General Laws, and for purposes of said chapter, the Authority shall be deemed to be an employer or public employer and a legislative body. The Authority may designate a representative to act in its interest in labor relations matters with its employees. Rights and obligations under the most recent existing or expired collective bargaining agreements with respect to employees transferred to the Authority and with respect to all employee organizations representing such employees at the time of transfer, except to the extent expressly inconsistent with this act, shall be assumed by and imposed upon the Authority, and employees transferred to the Authority who are subject to such agreements shall continue to be represented by the employee organizations that are parties to such agreements until such time as they elect to be otherwise represented in accordance with the provisions of chapter one hundred and fifty E. Existing bargaining units shall remain in full force and effect for those employees transferred to the Authority until otherwise changed by law. Collective bargaining agreements in effect at the time of transfer shall continue in effect until their stated expiration date and successor negotiations shall be conducted and resolved between the Authority and the employee organizations representing employees covered by such collective bargaining agreements in accordance with the provisions of Chapter 150E and this Act. The terms and conditions of expired collective bargaining agreements under renegotiation at the time of transfer shall be observed by the Authority and the Authority shall conclude and resolve negotiations for successor agreements with the employee organizations representing employees covered by such collective bargaining agreements in accordance with the provisions of Chapter 150E and this Act. Any expired collective bargaining agreement covering employees transferred to the Massachusetts Surface Transportation Authority for which successor contract negotiations are on-going as of March 1, 2009 will be extended for 6 months after the effective date of the act, unless mutually agreed otherwise by the employees’ exclusive bargaining representative and the Massachusetts Surface Transportation Authority, to permit the successful completion of successor negotiations.

Nothing in this section shall be construed as conferring upon the employees of the authority the right to strike, nor as detracting from the obligations of the authority and the employees to submit all grievances and other disputes to arbitration.

Section 15A. Notwithstanding section 13, the authority or any organizations representing employees of the authority shall not be permitted to submit any dispute over the terms of a collective bargaining agreement to arbitration except in accordance with sections 15 through 19, inclusive; provided, however, that this section shall not limit the rights of organizations representing employees of the authority to submit grievances to arbitration in accordance with the collective bargaining agreement between the parties.

Section 15B. In the event the directors and any organizations representing employees of the authority have not reached an agreement within 90 days from the date of the expiration of the agreement, either party may notify the other that it desires mediation. The parties may agree upon a person to serve as a mediator or, if unable to agree on said mediator, either party or the parties acting jointly may petition the board of conciliation and arbitration to appoint a mediator from a list of qualified persons maintained by the board.

After a reasonable period of mediation, not to exceed 45 days from the date of appointment, said mediator shall issue a report indicating the results of his services in resolving the impasse. If at the conclusion of mediation the impasse still exists, the

mediator shall so certify. In the event, the mediator shall certify in his report the last best offer of each party on each unresolved issue which has been submitted to mediation and shall also certify the agreement of the parties on each issue on which agreement has been reached and shall submit such certifications to the arbitrator selected by the parties. In such event, so long as the mediator shall also certify that the parties have bargained in good faith, either party may notify the other that it desires arbitration of the dispute. Within 10 days of said notice, the parties shall meet to select a single neutral arbitrator. If, within 15 days, the parties fail to select such single arbitrator, either party may forthwith petition the board of conciliation and arbitration to request a list of 5 arbitrators from the American Arbitration Association and said Association shall certify to the board that such arbitrators on the list it provides possess the qualifications as provided in section 30. The parties shall thereupon meet to select such arbitrator by striking 1 name each until 1 name remains and that person shall serve as the neutral arbitrator. If, after 10 days, one of the parties declines to strike their names, the other party shall strike 2 names and the board shall forthwith select the arbitrator from the remaining 3 names.

Section 15C. The single arbitrator, whether agreed upon by the parties or selected by the board of conciliation and arbitration, shall be a legal resident of the commonwealth and shall be experienced in state and local finance.

Section 15D. The arbitrator shall rely primarily on the following factors in determining the basis for an award:

(a) the financial ability of the authority to meet additional costs, which shall include, but not be limited to: (i) the statutory requirement that the authority produce revenues in excess of expenses; (ii) the financial ability of the individual communities and the commonwealth to meet additional costs; (iii) the average per capita tax burden, average annual income and sources of revenue within the commonwealth, and the effect of any arbitration award on the respective property tax rates of the cities and towns within the authority's district;

(b) the overall compensation presently received by the employees, having regard not only for wages for time actually worked but also for wages for time not worked, including vacations, holidays and other excused time;

(c) all benefits received by the employees, including insurance, pension, as well as the continuity and stability of employment;

(d) the hazards of employment, physical, educational and mental qualifications, job training and skills involved;

(e) a comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services within the commonwealth and with other employees generally in public and private employment within the commonwealth;

(f) the average consumer price for goods and services, commonly known as the cost of living;

(g) changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

(h) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service of the commonwealth, and which are not precluded from bargaining under section 13; and

(i) The stipulation of the parties.

Section 15E. The arbitrator shall be limited in making his award to choosing between the last best offers of the parties on each issue as certified in the mediator's report or any award in the range between the last best offers of the parties. The arbitrator shall make no award on any issue found by him to be not authorized by law to be submitted to arbitration, but shall state such finding in his written opinion. Within 30 calendar days of an award, the arbitrator shall issue a written opinion inclusive of an analysis of all statutory factors applicable to the proceedings. Any determination by the arbitrator, if supported by material and substantial evidence on the record, shall be binding upon the parties and upon the appropriate legislative or appropriating body and may be enforced at the insistence of either party or by the arbitrator in the superior court. The scope of arbitration shall be limited to wages, hours and conditions of employment and shall not include any provisions for any cost of living adjustment which are based on changes in the consumer price index after the expiration of the contract period covered by the award. In addition, any wage or salary adjustments shall be expressed in per cent or dollar amounts, and in no case shall there be any provision for salary adjustments to occur after the expiration of the contract period covered by the award.

The cost, if any, of the mediation and of arbitration proceedings exclusive of the expenses of the individual parties provided for under sections 15 to 15E, inclusive, shall be divided equally by the parties and shall be in accordance with a schedule of payments established by the American Arbitration Association.”; and by striking out section 124 (as printed) and inserting in place thereof the following section:

“SECTION 122. (a) On July 1, 2009, each employee of the Massachusetts Turnpike Authority whose salary is paid out of revenue generated by the authority as defined in section 3 of chapter 81A of the General Laws, and whose salary is accounted for on the books of the Massachusetts Turnpike Authority as arising from revenue generated that authority shall become an employee of the Massachusetts Surface Transportation Authority, hereinafter referred to as the Authority.

(b) On July 1, 2010, all remaining employees of the Massachusetts Turnpike Authority shall become employees of the Massachusetts Surface Transportation Authority.

All officers and employees of the Massachusetts Turnpike Authority transferred to the service of the Massachusetts Surface Transportation Authority shall be transferred without impairment of seniority, civil service status, retirement or other statutory rights of employees, without reduction in compensation or salary grade, notwithstanding any change in job titles or duties, without loss of accrued rights to holidays, sick leave, vacation and other benefits, and without change in union representation, except as otherwise provided in this section. Terms of service of employees of the Massachusetts Turnpike Authority shall not be deemed to be interrupted by virtue of transfer to the Massachusetts Surface Transportation Authority.

1. Rights and obligations under collective bargaining agreements with respect to employees transferred from the Massachusetts Turnpike Authority, except to the extent expressly inconsistent with this section, shall be assumed by and imposed upon the Massachusetts Surface Transportation Authority . Except to the extent expressly inconsistent with this section, any collective bargaining agreement in effect for such transferred employees immediately before the transfer date shall continue as if the employees had not been so transferred, until the expiration date of such collective bargaining agreement. The Massachusetts Surface Transportation Authority shall negotiate in good faith pursuant chapter 150E of the General Laws with respect to wages, hours and other terms and conditions of employment to become effective as of

the expiration date of such collective bargaining agreement. Any expired collective bargaining agreement covering employees transferred to the Massachusetts Surface Transportation Authority for which successor contract negotiations are on-going as of March 1, 2009 will be extended for 6 months after the effective date of the act, unless mutually agreed otherwise by the employees' exclusive bargaining representative and the Massachusetts Surface Transportation Authority, to permit the successful completion of successor negotiations. Nothing in this section shall be construed to confer upon any employee any right not held immediately prior to the date of the transfer or to prohibit any reduction of salary or grade, transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited before such date.

2. All such collective bargaining agreements shall be subject to the dispute resolution provisions and all other terms of section 6, subsections 15A to 15F.”.

Pending the question on adoption of the amendments, Messrs. Wagner of Chicopee and Walsh of Boston moved that the amendments be amended by striking out the following: “by striking out subsection 15” and inserting in place thereof the following: “by inserting after subsection 15”; by striking out proposed subsections 15 to 15E, inclusive and inserting in place thereof the following five subsections:

“Section 15A. Notwithstanding section 13, the authority or any organizations representing employees of the authority shall not be permitted to submit any dispute over the terms of a collective bargaining agreement to arbitration except in accordance with sections 15A through 15E, inclusive; provided, however, that this section shall not limit the rights of organizations representing employees of the authority to submit grievances to arbitration in accordance with the collective bargaining agreement between the parties.

Section 15B. In the event the directors and any organizations representing employees of the authority have not reached an agreement within 90 days from the date of the expiration of the agreement, either party may notify the other that it desires mediation. The parties may agree upon a person to serve as a mediator or, if unable to agree on said mediator, either party or the parties acting jointly may petition the board of conciliation and arbitration to appoint a mediator from a list of qualified persons maintained by the board.

After a reasonable period of mediation, not to exceed 45 days from the date of appointment, said mediator shall issue a report indicating the results of his services in resolving the impasse. If at the conclusion of mediation the impasse still exists, the mediator shall so certify. In the event, the mediator shall certify in his report the last best offer of each party on each unresolved issue which has been submitted to mediation and shall also certify the agreement of the parties on each issue on which agreement has been reached and shall submit such certifications to the arbitrator selected by the parties. In such event, so long as the mediator shall also certify that the parties have bargained in good faith, either party may notify the other that it desires arbitration of the dispute. Within 10 days of said notice, the parties shall meet to select a single neutral arbitrator. If, within 15 days, the parties fail to select such single arbitrator, either party may forthwith petition the board of conciliation and arbitration to request a list of 5 arbitrators from the American Arbitration Association and said Association shall certify to the board that such arbitrators on the list it provides possess the qualifications as provided in section 30. The parties shall thereupon meet to select such arbitrator by striking 1 name each until 1 name remains and that person shall serve as the neutral arbitrator. If, after 10 days, one of the parties declines to strike their names, the other party shall strike 2 names and the board shall forthwith select the arbitrator from the remaining 3 names.

Section 15C. The single arbitrator, whether agreed upon by the parties or selected by the board of conciliation and arbitration, shall be a legal resident of the commonwealth and shall be experienced in state and local finance.

Section 15D. The arbitrator shall rely primarily on the following factors in determining the basis for an award:

(a) the financial ability of the authority to meet additional costs, which shall include, but not be limited to: (i) the statutory requirement that the authority produce revenues in excess of expenses; (ii) the financial ability of the individual communities and the commonwealth to meet additional costs; (iii) the average per capita tax burden, average annual income and sources of revenue within the commonwealth, and the effect of any arbitration award on the respective property tax rates of the cities and towns within the authority's district;

(b) the overall compensation presently received by the employees, having regard not only for wages for time actually worked but also for wages for time not worked, including vacations, holidays and other excused time;

(c) all benefits received by the employees, including insurance, pension, as well as the continuity and stability of employment;

(d) the hazards of employment, physical, educational and mental qualifications, job training and skills involved;

(e) a comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services within the commonwealth and with other employees generally in public and private employment within the commonwealth;

(f) the average consumer price for goods and services, commonly known as the cost of living;

(g) changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

(h) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service of the commonwealth, and which are not precluded from bargaining under section 13; and

(i) The stipulation of the parties.

Section 15E. The arbitrator shall be limited in making his award to choosing between the last best offers of the parties on each issue as certified in the mediator's report or any award in the range between the last best offers of the parties. The arbitrator shall make no award on any issue found by him to be not authorized by law to be submitted to arbitration, but shall state such finding in his written opinion. Within 30 calendar days of an award, the arbitrator shall issue a written opinion inclusive of an analysis of all statutory factors applicable to the proceedings. Any determination by the arbitrator, if supported by material and substantial evidence on the record, shall be binding upon the parties and upon the appropriate legislative or appropriating body and may be enforced at the insistence of either party or by the arbitrator in the superior court. The scope of arbitration shall be limited to wages, hours and conditions of employment and shall not include any provisions for any cost of living adjustment which are based on changes in the consumer price index after the expiration of the contract period covered by the award. In addition, any wage or salary adjustments shall be expressed in per cent or dollar amounts, and in no case shall there be any provision for salary adjustments to occur after the expiration of the contract period covered by

the award.

The cost, if any, of the mediation and of arbitration proceedings exclusive of the expenses of the individual parties provided for under sections 15 to 19, inclusive, shall be divided equally by the parties and shall be in accordance with a schedule of payments established by the American Arbitration Association.”; and by striking out the proposed section 122 and inserting in place thereof the following section:

“SECTION 122. (a) On July 1, 2009, each employee of the Massachusetts Turnpike Authority whose salary is paid out of revenue generated by the authority as defined in section 3 of chapter 81A of the General Laws, and whose salary is accounted for on the books of the Massachusetts Turnpike Authority as arising from revenue generated that authority shall become an employee of the Massachusetts Transportation and Infrastructure Authority, hereinafter referred to as the Authority.

(b) On July 1, 2010, all remaining employees of the Massachusetts Turnpike Authority shall become employees of the Massachusetts Transportation and Infrastructure Authority.

(c) All officers and employees of the Massachusetts Turnpike Authority transferred to the service of the Massachusetts Transportation and Infrastructure Authority shall be transferred without impairment of seniority, civil service status, retirement or other statutory rights of employees, without reduction in compensation or salary grade, notwithstanding any change in job titles or duties, without loss of accrued rights to holidays, sick leave, vacation and other benefits, and without change in union representation, except as otherwise provided in this act. Terms of service of employees of the Massachusetts Turnpike Authority shall not be deemed to be interrupted by virtue of transfer to the Massachusetts Transportation and Infrastructure Authority.

(d) Rights and obligations under collective bargaining agreements with respect to employees transferred from the Massachusetts Turnpike Authority, except to the extent expressly inconsistent with this act, shall be assumed by and imposed upon the Massachusetts Transportation and Infrastructure Authority. Except to the extent expressly inconsistent with this act, any collective bargaining agreement in effect for such transferred employees immediately before the transfer date shall continue as if the employees had not been so transferred, until the expiration date of such collective bargaining agreement. The Massachusetts Transportation and Infrastructure Authority shall negotiate in good faith pursuant chapter 150E of the General Laws with respect to wages, hours and other terms and conditions of employment to become effective as of the expiration date of such collective bargaining agreement. Any expired collective bargaining agreement covering employees transferred to the Massachusetts Transportation and Infrastructure Authority for which successor contract negotiations are on-going as of March 1, 2009 shall be extended for 6 months after the effective date of the act, unless mutually agreed otherwise by the employees’ exclusive bargaining representative and the Massachusetts Transportation and Infrastructure Authority, to permit the successful completion of successor negotiations. Nothing in this section shall be construed to confer upon any employee any right not held immediately prior to the date of the transfer or to prohibit any reduction of salary or grade, transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited before such date.

(e) Notwithstanding any general or special law to the contrary, an employee of the Massachusetts Turnpike Authority who is hired on or after the effective date of this act shall only be eligible for health care coverage under the group insurance commission, provided that the employee meets the eligibility requirements of the group insurance commission.”.

The further amendments were adopted, thus precluding a vote on the pending amendments.

Representatives Provost of Somerville and Khan of Newton then moved to amend the bill in line 852 by striking out the words “consideration for”, in line 856 by striking out the words “give consideration”; and in line 858 by striking out the word “to.”.

The amendments were adopted.

Representatives Rushing of Boston and Walz of Boston then moved to amend the bill [A]in line 1765, at the end of subsection 51 (as printed), after the word “government.”, by inserting the following subsection:

“Section 50A: Leasing of air rights and land; taxation

(a) In addition to any other power the division may have to make leases, the division may lease at one time or from time to time for terms not to exceed ninety-nine years, upon such terms and conditions as the division in its discretion deems advisable, air rights over land owned or held by the division in connection with the turnpike and the Boston extension portion of the turnpike, including rights for support, access, utilities, light and air, for such purposes as, in the opinion of the division, shall not impair the construction, full use, safety, maintenance, repair, operation or revenues of the turnpike; provided, however, that any such lease for a period of forty years or more shall be subject to the approval of the governor. Any lease granted under this section may, with the consent of the division, be assigned, pledged or mortgaged and the lien of such pledge or mortgage may be foreclosed by appropriate action.

(b) The division shall not lease any air rights in a particular location unless it shall find that the construction and use of buildings or other things to be erected or affixed pursuant to any such lease shall be in no way detrimental to the maintenance, use and operation of the turnpike and, in the city of Boston, unless the division shall also find, after consultation with the mayor that the construction and use of such buildings or other things shall preserve and increase the amenities of the community.

(c) The construction or occupancy of any building or other thing erected or affixed under any lease under this section of air rights shall be subject to the building, fire, garage, health and zoning laws and the building, fire, garage, health and zoning ordinances, by-laws, rules and regulations applicable in the city or town in which such building or other thing is located.

(d) Neither such air rights nor any buildings or other things erected or affixed pursuant to any such lease nor the proceeds from any such lease shall be taxed or assessed to the division under any general or special law; provided, however, that buildings and other things erected or affixed pursuant to any such lease shall be taxed to the lessee thereof or his assigns in the same manner and to the same extent as if such lessee or his assigns were the owners of the land in fee; provided, further, that no part of the value of the land shall be included in any such assessment; and provided, further, that payment of any such taxes shall not be enforced by a lien upon or sale or taking of such land except that the leasehold estate may be sold or taken by the collector of taxes of the city or town wherein such real estate is situated for the nonpayment of any tax assessed as aforesaid in the manner provided by law for the sale or taking of real estate for nonpayment of local taxes. Such collector shall have for the collection of taxes assessed under this section all other remedies provided by the General Laws for the collection of taxes by collectors of cities and towns.

The authority shall include in any lease of such air rights a provision whereby the lessee agrees, in the event that the foregoing tax provision is determined by any court of competent jurisdiction to be inapplicable, to pay annually to the city or town wherein such building or other thing leased is located, a sum of money in lieu of taxes which

would otherwise be assessed for such year.

(e) In addition to any other power the division may have to make leases, the division may lease at one time or from time to time for terms not to exceed ninety-nine years, upon such terms and conditions as the division in its discretion deems advisable, land owned by the division and no longer required for the maintenance, repair, reconstruction, improvement, use, administration or operation of the turnpike or the Boston extension of the turnpike; provided, however, that any such lease for a period of forty years or more shall be subject to the approval of the governor. A lease granted under this section may, with the consent of the division, be assigned, pledged or mortgaged and the lien of such pledge or mortgage may be foreclosed by appropriate action.

(f) The division shall not lease any land in a particular location unless it shall find that the construction and use of buildings or other things to be erected or affixed pursuant to any such lease shall be in no way detrimental to the maintenance, use and operation of the turnpike and, in the city of Boston, unless the division shall also find, after consultation with the mayor that the construction and use of such buildings or other things shall preserve and increase the amenities of the community.

(g) The construction or occupancy of any building or other thing erected or affixed under any lease under this section of land shall be subject to the building, fire, garage, health and zoning laws and the building, fire, garage, health and zoning ordinances, by-laws, rules and regulations applicable in the city or town in which such building or other thing is located.

(h) Neither such land nor any buildings or other things erected or affixed pursuant to any such lease nor the proceeds from any such lease shall be taxed or assessed to the division under any general or special law; provided, however, that such land and buildings and other things erected or affixed pursuant to any such lease shall be taxed to the lessee thereof or his assigns in the same manner and to the same extent as if such lessee or his assigns were the owners of the land in fee; provided, further, that payment of any such taxes shall not be enforced by a lien upon or sale or taking of such land except that the leasehold estate may be sold or taken by the collector of taxes of the city or town wherein such land is situated for the nonpayment of any tax assessed as aforesaid in the manner provided by law for the sale or taking of real estate for nonpayment of local taxes. Such collector shall have for the collection of taxes assessed under this section all other remedies provided by the General Laws for the collection of taxes by collectors of cities and towns.

The division shall include in any lease of such land a provision whereby the lessee agrees, in the event that the foregoing tax provision is determined by any court of competent jurisdiction to be inapplicable, to pay annually to the city or town in which such leased land is located a sum of money in lieu of taxes which would otherwise be assessed for such year.

(i) A copy of all leases granted by the division under this section shall be filed by the division with the governor and with the mayor or chairperson of the board of selectmen of the respective city or town and such leases shall be deemed to be public records within the meaning of chapter sixty-six.”.

Pending the question on adoption of the amendment, Messrs. Wagner of Chicopee and others moved to amend it by inserting at the beginning of said amendment [at “A”] the following: “in lines 273 and 1270, by striking out the word ‘board’ and inserting in place thereof, in each instance, the word:- governor”; and by striking out proposed subsection 50A and inserting in place thereof the following subsection:

“Section 50A. In addition to any other power the authority may have to make leases, the authority may lease at one time or from time to time for terms not to exceed ninety-nine years, upon such terms and conditions as the authority in its discretion deems advisable, air rights over land owned or held by the authority in connection with the turnpike and the Boston extension portion of the metropolitan highway system, including rights for support, access, utilities, light and air, for such purposes as, in the opinion of the authority, shall not impair the construction, full use, safety, maintenance, repair, operation or revenues of the turnpike or the metropolitan highway system; provided, however, that any such lease for a period of forty years or more shall be subject to the approval of the governor. Any lease granted under this section may, with the consent of the authority, be assigned, pledged or mortgaged and the lien of such pledge or mortgage may be foreclosed by appropriate action.

Use of air rights leased under this section respecting land within the territorial limits of the city of Boston and the construction and occupancy of buildings or other things erected or affixed pursuant to any such lease shall be made in accordance with the provisions of the state building code enacted pursuant to chapter one hundred and forty-three and such other requirements as the authority deems necessary or advisable to promote the public health, convenience and safety of persons and property but shall not be subject to any other building, fire, garage, health or zoning law or any building, fire, garage, health or zoning ordinance, rule or regulation applicable in the city of Boston.

The authority shall not lease any air rights in a particular location unless it shall find that the construction and use of buildings or other things to be erected or affixed pursuant to any such lease shall be in no way detrimental to the maintenance, use and operation of the turnpike or the metropolitan highway system and, in the city of Boston, unless the authority shall also find, after consultation with the mayor that the construction and use of such buildings or other things shall preserve and increase the amenities of the community.

The construction or occupancy of any building or other thing erected or affixed under any lease under this section of air rights respecting land outside the territorial limits of the city of Boston shall be subject to the building, fire, garage, health and zoning laws and the building, fire, garage, health and zoning ordinances, by-laws, rules and regulations applicable in the city or town in which such building or other thing is located.

A copy of all leases granted by the authority under this section shall be filed by the authority with the governor and with the mayor or chairperson of the board of selectmen of the respective city or town and such leases shall be deemed to be public records within the meaning of chapter sixty-six.

Neither such air rights nor any buildings or other things erected or affixed pursuant to any such lease nor the proceeds from any such lease shall be taxed or assessed to the authority under any general or special law; provided, however, that buildings and other things erected or affixed pursuant to any such lease shall be taxed to the lessee thereof or his assigns in the same manner and to the same extent as if such lessee or his assigns were the owners of the land in fee; provided, further, that no part of the value of the land shall be included in

any such assessment; and provided, further, that payment of any such taxes shall not be enforced by a lien upon or sale or taking of such land except that the leasehold estate may be sold or taken by the collector of taxes of the city or town wherein such real estate is situated for the nonpayment of any tax assessed as aforesaid in the manner provided by law for the sale or taking of real estate for nonpayment of local taxes. Such collector shall have for the collection of taxes assessed under this section all other remedies provided by the General Laws for the collection of taxes by collectors of cities and towns.

The authority shall include in any lease of such air rights a provision whereby the lessee agrees, in the event that the foregoing tax provision is determined by any court of competent jurisdiction to be inapplicable, to pay annually to the city or town wherein such building or other thing leased is located, a sum of money in lieu of taxes which would otherwise be assessed for such year.”.

The further amendments were adopted, thus precluding a vote on the pending amendment.

Mr. Walsh of Lynn and other members then moved to amend the bill in line 1210, after the word “authority.”, by inserting the following paragraph:

“(c) In order to determine, as a basis for legislative action, whether or not barrier tolls are the best practice in collecting transportation revenues, there is hereby established a commission which shall be known as the Commonwealth Toll Collection Commission, for the purpose of conducting a study on whether or not barrier free tolling is a more effective way to collect revenues and the cost of establishing such a system.”.

The amendment was adopted.

Mr. Miceli of Wilmington and other members then moved to amend the bill by inserting after section 95 (as printed) the following section:

“SECTION 94A. Section 3 of chapter 161A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking subsections (i) and (n) in its entirety and inserting in its place thereof the following subsections:—(i) To provide mass transportation service, whether directly, jointly or under contract, on an exclusive basis, in the area constituting the authority and without being subject to the jurisdiction and control of the department of telecommunications and energy in any manner except as to safety of equipment and operations and, with respect only to operations of the authority with equipment owned and operated by the authority, without, except as otherwise provided in this chapter, being subject to the jurisdiction and control of any city or town or other licensing authority; provided, that schedules and routes shall not be considered matters of safety subject to the jurisdiction and control of said department. Except as otherwise provided in this chapter, the board shall determine the character and extent of the services and facilities to be furnished, and in these respects their authority shall be exclusive and shall not be subject to the approval, control or direction of any state, municipal or other department, board or commission, except (a) that such facilities must comply with local zoning ordinances and regulations with respect to any commercial, above ground sign advertising in or on such facilities and equipment, unless such sign (i) receives approval by the local governing body (ii) does not exceed the dimensions of the building or transit station or stop to which it is affixed (iii) is solely related to mass transportation services and operations or (iv) is affixed to a mobile transit vehicle or (b) where the advisory board is given authority as provided in this chapter. Nothing contained in this paragraph shall be construed as exempting

any privately owned or controlled carrier, whether operating independently, jointly or under contract with the authority, from obtaining any license required under section 1 of chapter 59A.

(n) To sell, lease or otherwise contract for advertising in or on the facilities of the authority, except that such facilities must comply with local zoning ordinances and regulations with respect to any commercial, above ground sign advertising in or on such facilities, unless such sign (i) receives approval by the local governing body (ii) does not exceed the dimensions of the building or transit station or stop to which it is affixed (iii) is solely related to mass transportation services and operations or (iv) is affixed to a mobile transit vehicle. No structure shall be constructed with the purpose of circumventing the intent of this paragraph.”; and by inserting after section 161 (as printed) the following section:

“SECTION 160A. (a) The Massachusetts Bay Transportation Authority shall transfer all mass transportation facilities and equipment under its custody and control, the right to collect fare revenue for services in connection with such mass transportation facilities and equipment and all related assets, liabilities, expenses and obligations to the division of public transit in the Massachusetts Surface Transportation Authority not later than July 1, 2011.

(b) Any commercial, above ground sign advertising in or on such facilities and equipment must comply with local zoning ordinances and regulations, unless such sign (i) receives approval by the local governing body (ii) does not exceed the dimensions of the building or transit station or stop to which it is affixed (iii) is solely related to mass transportation services and operations or (iv) is affixed to a mobile transit vehicle. No structure shall be constructed with the purpose of circumventing the intent of this paragraph.

(c) The transfer by the Massachusetts Bay Transportation Authority of the mass transportation facilities and equipment required in this section may be made pursuant to such other terms and conditions as may be acceptable to the transferor and the Massachusetts Surface Transportation Authority, but such terms shall be consistent with and authorized by chapter 161A of the General Laws and any trust agreement to which the Massachusetts Bay Transportation Authority is a party as of the effective date of this act.

(d) On July 1, 2011, ownership, possession and control of the mass transportation facilities and equipment referred to in this section shall pass to and be vested in the Massachusetts Surface Transportation Authority without consideration or further evidence of transfer.

(e) All books, maps, papers, plans, records and documents of whatever description pertaining to the design, construction, operation and affairs of the mass transportation facilities and equipment which are in the possession of the Massachusetts Bay Transportation Authority on June 30, 2011, or which thereafter come into the possession of the Massachusetts Bay Transportation Authority shall be transferred and delivered for the Massachusetts Surface Transportation Authority to its use, ownership, possession and control.

(f) On July 1, 2011, all proceeds of bonds, grants and other aid which are held by the Massachusetts Bay Transportation Authority on the effective date of this act shall then and thereafter be deemed to be held in trust for, and shall upon demand of the Authority be transferred to the Massachusetts Surface Transportation Authority to be applied to projects for which such bonds, grants or other aid were authorized. All proceeds of bonds, grants or other aid referred to herein, which shall be so held in trust and transferred upon demand, shall be in the amount as certified by the general

manager of the Massachusetts Bay Transportation Authority to the state treasurer.”.

Pending the question on adoption of the amendments, Mr. Wagner of Chicopee and other members moved that they be amended by striking out proposed section 94A and inserting in place thereof the following two sections:

“SECTION 94A. Section 3 of chapter 161A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 83, the word ‘chapter.’ and inserting in place thereof the following words:- chapter; provided, however, that such facilities shall comply with local zoning ordinances and regulations with respect to any commercial, above ground sign advertising in or on such facilities and equipment, unless such sign (i) receives approval by the local governing body (ii) does not exceed the dimensions of the building or transit station or stop to which it is affixed (iii) is solely related to mass transportation services and operations or (iv) is affixed to a mobile transit vehicle.

SECTION 94B. Said section 3 of said chapter 161A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out subsection (n) and inserting in place thereof the following subsection:-

(n) To sell, lease or otherwise contract for advertising in or on the facilities of the authority; provided, however, that that such facilities shall comply with local zoning ordinances and regulations with respect to any commercial, above ground sign advertising in or on such facilities, unless such sign (i) receives approval by the local governing body (ii) does not exceed the dimensions of the building or transit station or stop to which it is affixed (iii) is solely related to mass transportation services and operations or (iv) is affixed to a mobile transit vehicle. No structure shall be constructed with the purpose of circumventing the intent of this paragraph.”; and by striking out proposed section 160A.

The further amendments were adopted, thus precluding a vote on the pending amendments.

Mr. Jones of North Reading and other members then moved to amend the bill by inserting after section 20 (as printed) the following section:

“SECTION 17A. Subparagraph (C) of section 2 of chapter 21J of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking the sentence contained in lines 41-43, inclusive, and inserting in place thereof the following:- The department shall deposit all receipts collected pursuant to this section as follows: (i) 40 percent shall be deposited into the General Fund; and (ii) 60 percent shall be deposited into the Capital Employees Transition Fund, established pursuant to section 2AAAA of chapter 29.”; and by inserting after section 31 (as printed) the following section:

“SECTION 29A. Chapter 29 of the General Laws, as so appearing, is hereby amended by inserting after section 2ZZZ the following section:-

Section 2AAAA. There shall be established and set upon the books of the commonwealth a separate fund to be known as the Capital Employees Transition Fund, hereinafter referred to as the fund, which shall be administered by the department of transportation. There shall be credited to the fund: (a) 60 percent of all receipts collected pursuant to section 2 of chapter 21J; and (b) any appropriations authorized by the general court. Amounts credited to the fund shall be expended by the department, in addition to any revenues appropriated by the general court from the Commonwealth Transportation Fund, for the purpose of paying for a portion of the department’s operating costs that would have otherwise been paid by bond proceeds. Operating costs may include, but shall not be limited to, the full-time personnel expenses of the department, as well as any expenses incurred by the department as part of its normal

operations. The comptroller shall certify payments, including payments during the accounts payable period, in anticipation of revenues from the fund for the purpose of making authorized expenditures; provided however, that no expenditure shall cause the fund to be in deficit at the end of a fiscal year.”.

After remarks on the question on adoption of the amendment, Mr. Jones moved that they be amended striking out proposed section 17A and inserting in place thereof the following section:

“SECTION 17A. Subparagraph (C) of section 2 of chapter 21J of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking the sentence contained in lines 41-43, inclusive, and inserting in place thereof the following:- The department shall deposit all receipts collected pursuant to this section as follows: (i) an amount appropriated by the legislature for reimbursements rendered pursuant to this chapter shall be deposited into the General Fund; and (ii) the remainder of the receipts shall be deposited into the Capital Employees Transition Fund, established pursuant to section 2AAAA of chapter 29.”; and by adding at the end of said amendments the following: “by adding at the end thereof the following section:

“SECTION 177. Section 17A and 29A of this act shall take effect on July 1, 2010.”.

After remarks the further amendments were adopted.

On the question on adoption of the amendments, as amended, the sense of the House was taken by the yeas and nays at the request of Mr. Jones of North Reading; and on the roll call 154 members voted in the affirmative and 0 in the negative.

Amendments
adopted,—
yea and nay
No. 58.

[See Yea and Nay No. 58 in Supplement.]

Therefore the amendments were adopted.

Mr. Donato of Medford and other members then moved to amend the bill by striking out sections 139 and 140 (as printed).

The amendment was adopted.

Ms. Walz of Boston then moved to amend the bill in line 3696, after the word “authorized”, by inserting the words “and approved”, and in line 3698 by striking out the word “on” and inserting in place thereof the word “and”.

The amendments were adopted.

Mr. Jones of North Reading and other members then moved to amend the bill by adding the following section:

“SECTION 178. Notwithstanding any general or special law to the contrary, when all notes and bonds issued by the Massachusetts turnpike authority relating to the turnpike and payable from turnpike revenues, as defined by section 1 of chapter 6C, have been paid or a sufficient amount for the payment of all such notes or bonds and the interest thereon, to the maturity thereof, shall have been set aside in trust for the benefit of the holders of such notes or bonds and the turnpike is deemed to be in good condition and repair to the satisfaction of the division of highways[A], the turnpike shall thereafter be operated and maintained by the highway department free of tolls.”.

After remarks on the question on adoption of the amendment, Mr. Wagner moved that it be amended by inserting [at “A”] the following: “and upon a 2/3 vote of the General Court”.

After remarks the further amendment was adopted.

On the question on adoption of the amendment, as amended, the sense of the House was taken by the yeas and nays at the request of Mr. Peterson of Grafton; and on the roll call 154 members voted in the affirmative and 0 in the negative.

Amendment
adopted,—
yea and nay
No. 59.

[See Yea and Nay No. 59 in Supplement.]

Therefore the amendment, as amended, was adopted.

Mr. Jones of North Reading and other members then moved to amend the bill by adding the following section:

“SECTION 179. Notwithstanding any general law or special law to the contrary, the Massachusetts Transportation and Infrastructure Authority, the Department of Transportation, or any subdivision thereof, is hereby prohibited from exploring or collecting new tolls on any highway or road, or any portion thereof, except along the Turnpike, Metropolitan highway system, or the Tobin memorial bridge, as defined by section 1 of chapter 6C of the General Laws, without express authorization of the Legislature.”.

After remarks on the question on adoption of the amendment, the sense of the House was taken by the yeas and nays at the request of Mr. Jones; and on the roll call 33 members voted in the affirmative and 121 in the negative.

Amendment
rejected,—
yea and nay
No. 60.

[See Yea and Nay No. 60 in Supplement.]

Therefore the amendment was rejected.

On the question on passing the bill, as amended, to be engrossed, in concurrence, the sense of the House was taken by the yeas and nays at the request of Mr. Wagner of Chicopee; and on the roll call (the Speaker being in the Chair) 147 members voted in the affirmative and 7 in the negative.

Bill passed to
be engrossed,—
yea and nay
No. 61.

[See Yea and Nay No. 61 in Supplement.]

Therefore the bill (Senate, No. 2024, amended) was passed to be engrossed (for text of bill, as amended by the House, see House document numbered 4051). Sent to the Senate for concurrence in the amendment.

Order.

On motion of Mr. Vallee of Franklin,—

Ordered, That when the House adjourns today, it adjourn to meet on Thursday next at eleven o'clock A.M.

Next sitting.

Accordingly, without further consideration of the remaining matters in the Orders of the Day, at five minutes before twelve o'clock midnight, on further motion of Mr. Vallee (the Speaker being in the Chair), the House adjourned, to meet the following Thursday at eleven o'clock A.M., in an Informal Session.